



**THE ATTORNEY GENERAL
OF TEXAS**

October 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Doyle Willis
Chairman
General Investigating Committee
House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-89-78

Dear Representative Willis:

You have asked us to determine whether non-lawyer "advocates" who appear before the Board of Pardons and Paroles are engaged in the unauthorized practice of law.

The unauthorized practice of law committee of the state bar is required to "seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of suits in the name of the committee." Gov't Code § 81.104. For purposes of that provision, the "practice of law" is defined as follows:

(a) In this chapter the 'practice of law' means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both

this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

Gov't Code § 81.101.

You do not describe the services performed by "advocates" in question. Therefore, we cannot offer an opinion as to whether those services require legal skill or knowledge and thus constitute the unauthorized practice of law for purposes of chapter 81 of the Government Code.

Further, the Supreme Court has held that courts have inherent power to determine what is the practice of law on a case-by-case basis. Unauthorized Practice Comm., State Bar v. Cortez, 692 S.W.2d 47, 50 (Tex.), cert. denied, 474 U.S. 980 (1985); see Brown v. Unauthorized Practice of Law Comm., 742 S.W.2d 34 (Tex. App. - Dallas 1987, writ denied). In Brown the court wrote:

The practice of law embraces in general all advice to clients and all action taken for them in matters connected with the law. . . . When a person acts for himself or others and undertakes to advise prospective employers or clients by word or course of conduct concerning their legal rights and the prospects of settling personal injury, accident, or other legal claims, thereby encouraging the assertion or prosecution of claims or lawsuits, this person steps beyond the bounds of a legitimate investigation of the facts and engages in the unauthorized practice of law. . . .

The controlling purpose of all laws, rules, and decisions forbidding unlicensed persons to practice law is to protect the public against persons inexperienced and unlearned in legal matters from attempting to perform legal services. . . . The objective is to protect the public against injury from acts or services, professional in nature, deemed by both the legislature and the courts to be the practice of law, done or performed by those not deemed by law to be qualified to perform them. . . . The character of the service and its relation to the public interest determines whether services

performed by a layman constitute the practice
of law.

742 S.W.2d at 41-2 (emphasis and citations omitted). Again, because you provide us with no description of the services performed by "advocates" who appear before the Board of Pardons and Paroles, we are unable to offer an opinion as to whether a court might conclude, based on its inherent power to determine what constitutes the practice of law, that the services of such "advocates" constitute the unauthorized practice of law.

Very truly yours,

A handwritten signature in cursive script that reads "Sarah Woelk".

Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

SW/lcd

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